

Service Date: December 9, 1983

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Montana) UTILITY DIVISION
Public Service Commission's In-)
vestigation of the Montana Power) DOCKET NO. 82.3.9
Company's Reorganization as a)
Holding Company.) INTERIM ORDER NO. 5011a

APPEARANCES

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FOR NORTHERN PLAINS RESOURCE COUNCIL

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FOR THE COMMISSION:

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BEFORE:

GORDON E. BOLLINGER, Chairman
JOHN B. DRISCOLL, Commissioner
HOWARD L. ELLIS, Commissioner
CLYDE JARVIS, Commissioner
THOMAS J. SCHNEIDER, Commissioner

1. On March 1, 1982, the Commission instituted this docket to investigate the Montana Power Company's (MPC, The Company) proposed corporate reorganization.

2. Following a prehearing conference, procedural order, discovery and due notice, a hearing on the issues was held November 16 and 17, 1982.

3. Following the hearing, a transcript was prepared and briefs were filed.

4. Throughout the course of these administrative hearings, court challenges by MPC were pursued in the Montana Supreme Court, the District Court in Lewis and Clark County, and again in the Supreme Court.

5. On August 16, 1983, the Commission issued a proposed order in the docket, Order No. 5011. As explained in that order, the Commission proposed alternatives to a holding company organization as possibilities for alleviating the Commission's and the public's concerns about a holding company while at the same time addressing corporate goals. Company management had determined to be attainable through a holding company structure.

6. As a part of Order No. 5011 the Commission gave all parties an opportunity to comment on the proposals contained

in the Order. Comments were received by The Montana Senior Citizen's Association, the Central Montana Electric Generation and Transmission Company, and MPC.

7. After several extensions of time, final comments were filed by several parties.

8. Between the time of the proposed order and comments by parties, the Montana Supreme Court decided the appeal brought by the Company. *Montana Power Co. v. Public Service Commission*, Mont. , 40 St. _ Reprtr. 1712 (Oct. 27, 1983). In summary, the Court decided that 1) the Commission's order initiating this investigation violated MPC's due process rights in halting the reorganization pending investigation; 2) the Commission's ban on further steps toward reorganization exceeded its statutory powers; 3) the decision of whether the Commission had jurisdiction over the proposed reorganization, and, if so, to what extent, was premature since the Commission had the right in the first instance to determine the extent of its own jurisdiction .

9. Despite the Court's decision, Montana Power proceeded to comply with the Commission's proposed order and to file comments in this docket. Those comments state that, rather than pursue the holding company form the Company wished to reorganize to maintain MPC as the parent of both utility and nonutility subsidiaries. The only change that would take place is that those subsidiaries considered to be nonutility would be placed under a new corporation that also would be an MPC subsidiary. Attachment A to this order shows how the reorganization would look.

10. The Commission finds that MPC's response to the proposed order is fully in the spirit of seeking an alternative that will satisfy the Commission, the Company, and the ratepayer.

11. The Commission agrees philosophically with the proposal for the following reasons:

a) Under the holding company structure, the Commission was concerned that it would not have access to all records of the holding company itself and what were to become its subsidiaries. Under the new proposal, there is no doubt that the Commission will continue to have access to records of all subsidiaries of MPC, including those classified as nonutility.

b) Under the holding company structure, the Commission believed that the necessary financial coverages would not be maintained by MPC if some subsidiaries were transferred to the holding company. Under the proposed structure, there is no doubt that this problem would not arise.

c) Under the holding company structure, there was no assurance that utility and nonutility functions would be more completely separated than at present. This assurance has been given in MPC's current proposal. As these separations take place over a period of time they should lessen concerns either that the utility is subsidizing nonutility operations or that nonutility operations are subsidizing the utility. More complete separation of utility and nonutility operations has been a matter of concern to the Commission in this and other proceedings MPC has acknowledged those concerns in its comments here. The Commission wishes to make clear, however, that its concerns should not be interpreted by the Company as encouraging separations that do not make good economic sense. The Commission recognizes that there may well be corporate activities whose expenses should be shared at least for the time being.

d) Under the holding company structure, the Commission would lose control of MPC common stock issuances if it were determined that the holding company were not a public utility. Under the present proposal, the Commission's jurisdiction over stock issuances would not be affected.

12. Cross-subsidization has been an area of special concern to the Montana Senior Citizens Association, which has filed comments opposing MPC's latest proposal. The Commission has, therefore, examined the possibility of cross-subsidization with special scrutiny. The Commission's conclusion is that, as long as a utility has nonutility operations, there is always some possibility for cross-subsidization. Thus, the only guaranteed way to avoid cross-subsidization is for the utility to completely divest its nonutility companies. At this time, the Commission believes that any benefit that might accrue through this action would be far outweighed by detriments; just one example of those detriments would be the financial coverage previously discussed. Another would be loss of control over coal supplies for the Company's Colstrip plants. Although there have been substantial disagreements as to the pricing of that coal for ratemaking purposes, neither the Commission nor any party has ever urged that ratepayers would be benefited by sale of the coal properties; in fact, the Montana Consumer Counsel, while contesting the pricing issue, has consistently found ratepayer advantages in the Company's access to captive coal.

The Commission finds that the risk of cross-subsidization is no greater under the Company's latest proposal than it is under the present corporate structure. In addition, as the Company carries out its plans to more completely separate utility and nonutility operations, those risks will be

reduced.

13. Despite its general agreement with MPC's proposal, the Commission finds it prudent to keep this docket open.

Although MPC's management today states that it will not go forward with a holding company structure, with changing conditions, that position might change. Under the Supreme Court's decision, were that to occur, the Commission would be powerless to postpone it pending any further investigations found to be necessary. Since evidence in this docket has identified what the Commission believes to be several potential significant adverse impacts on ratepayers associated with a holding company structure, that evidence might be used as the basis for appropriate action should a holding company structure once again be contemplated by MPC.

14. The Commission also finds that this docket is an appropriate vehicle by which it can keep itself informed as to the steps taken to effectuate the new proposal. Although, as previously discussed, this proposal is much less drastic and should have no potential adverse effects on ratepayers, the Commission nonetheless believes that it has a basic responsibility to carefully monitor the steps taken by the Company to implement the new structure. The Company's proposal is understandably general, with many details, including timing of the changes, to be filled in at a later date. It is those details that are of interest to the Commission.

15. In view of these concerns, the Commission finds that the following information should be filed with the Commission within ninety (90) days of the service date of this order:

a) An implementation plan which details how the reorganization will be implemented and a proposed schedule setting out when necessary actions are expected to take place;

b) A description of all accounting entries that will be necessary for implementation of the reorganization;

1 It should be noted that the shareholders' authorization for a holding company structure remains in effect.

c) An outline of MPC's plans for future inter-Company transactions;

d) A list of which assets will be transferred in the course of reorganization;

e) A copy of the Board of Directors' minutes of the meeting at which the reorganization is approved. The minutes need only cover that portion of the meeting which involves the reorganization;

f) A copy of the Board's resolution that approves the reorganization.

Within thirty (30) days of the service date of this order MPC and the staff should develop a plan for an ongoing reporting system that will assure the Commission is kept fully informed of steps taken toward reorganization. A plan should then be submitted to the Commission.

The Commission recognizes that the reorganization plan may change as implementation goes forward. By requiring a

reorganization plan, the Commission does not intend that it must be followed blindly thereafter. The reporting plan should, therefore, provide a vehicle for MPC to inform the Commission of necessary changes to its initial scheme.

The Commission believes that this finding addresses the basic concerns outlined in the comments of the Central Montana Electric Generation and Transmission Cooperative.

16. The Commission wishes to make very clear that, by its general approval of the Company's latest plan for reorganization, it makes no decision as to whether MPC's utility and nonutility designations for particular subsidiaries and their assets are correct. As the Commission's previous orders and MPC's own comments indicate, there are unresolved questions as to the propriety of some of those designations. The Commission does agree with MPC that the answers to those questions should flow from other proceedings.

17. MPC's comments challenge the conclusion contained in Order No. 5011 that the previously proposed holding company would be a public utility subject to the Commission's jurisdiction. Although the issue is moot as long as the latest proposal is implemented, the Commission wishes to put parties on notice that its previous conclusion has not changed.

18. MPC's comments also claim that the present reorganization is not subject to the Commission's jurisdiction. Given the Company's cooperative approach, and the fact that this is an interim order, the Commission finds it unnecessary to address the issue in detail at this time. However, the Commission puts all parties on notice that it will exercise its

jurisdiction to the fullest extent if it perceives that any action proposed by MPC threatens ratepayer interests, either now or in the future.

CONCLUSIONS OF LAW

1. The findings of fact are hereby incorporated as conclusions of law.
2. The Montana Power Company furnishes electric service to consumers in Montana, and is a "public utility" under the regulatory jurisdiction of the Montana Public Service Commission. 69-3-101, MCA.
3. The Commission properly exercises jurisdiction over MPC's rates and operations. 69-3-102, 69-3-106, 69-3-201, 69-3-324, MCA.
4. The Commission has provided adequate public notice of all proceedings and opportunity to be heard to all interested parties in this Docket. Title 2 Chapter 4, MCA .
5. The Commission has jurisdiction over nonutility property to the extent that it affects utility rates or conditions of utility service. (MPC Exh. 2, Burke, p. 13; 69-3-201, MCA)
6. This order constitutes an intermediate agency action and, therefore, does not determine the rights of any party. 2-4-701, MCA.

ORDER

1. MPC shall file the information outlined in Finding of Fact No. 14 within the time specified.

2. MPC and the Commission's staff shall develop the reporting plan outlined in Finding of Fact No. 14 and submit such plan to the Commission.

3. This Docket shall remain open until further notice.

4. All motions and objections not previously ruled upon are denied.

DONE AND DATED this 5th day of December, 1983, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION.

THOMAS J. SCHNEIDER, Chairman

JOHN B. DRISCOLL, Commissioner

HOWARD L. ELLIS, Commissioner

CLYDE JARVIS, Commissioner

DANNY OBERG, Commissioner
(voting to Concur)

ATTEST:

Madeline L. Cottrill
Secretary
(SEAL)